

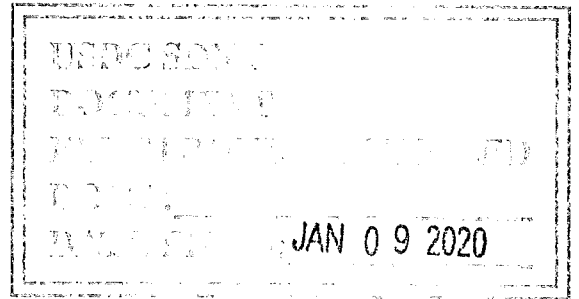
Law Offices of Ezra Spilke

1825 Foster Avenue, Suite 1K  
Brooklyn, New York 11230  
t: (718) 783-3682  
e: ezra@spilkelaw.com  
www.spilkelaw.com

January 7, 2020

**BY ECF**

Hon. Alison J. Nathan  
United States District Court  
Southern District of New York  
40 Foley Square  
New York, New York 10007



Re: *United States v. Rodriguez*, No. 16-CR-7-AJN

Dear Judge Nathan:

I write to request an order reappointing me in the above-captioned case and in *Rodriguez v. United States*, No. 19-cv-11662-AJN to represent Anthony Rodriguez on his motion pursuant to 28 U.S.C. § 2255.

By way of background, I represented Mr. Rodriguez in the above-captioned case before your honor through appeal and again before the Honorable Katherine Polk Failla when Mr. Rodriguez was prosecuted in this district (for conduct that predated the conduct that gave rise to the charges in this case) on indictment number 17-cr-449.

Mr. Rodriguez was convicted on a plea of guilty of two counts of possession of ammunition by a felon in violation of 18 U.S.C. § 922(g). Your Honor sentenced Mr. Rodriguez principally to 108 months' imprisonment on both counts to run concurrently. Direct review of this Court's judgment ended in January 2019.

On June 21, 2019, the Supreme Court decided *Rehaif v. United States*, 139 S. Ct. 2191 (2019), holding that 18 U.S.C. § 922(g) requires proof the defendant "knew he belonged to the relevant category of persons barred from possessing a firearm." 139 S. Ct. at 2200. I notified Mr. Rodriguez of the *Rehaif* decision and advised him of the potential applicability to his convictions. On December 17, 2019, Mr. Rodriguez filed his *pro se* § 2255 motion arguing that he pleaded guilty without being advised of or admitting an essential element of § 922(g), to wit knowledge that he was a felon when he possessed ammunition. Mr. Rodriguez thus clearly has made out a claim under *Rehaif* that his § 922(g) convictions should be vacated. The Court, acknowledging that Mr. Rodriguez's argument is not frivolous, ordered the government to respond to Mr. Rodriguez's motion.

I respectfully submit that the assistance of counsel is reasonably necessary to fulsomely present Mr. Rodriguez's claims under *Rehaif*. It does not appear that Mr. Rodriguez has the ability to pay for counsel. Mr. Rodriguez has been incarcerated since December 2015 and had the services of court-appointed counsel through the conclusion of his case before Judge Failla in May of last year. Accordingly, I respectfully request an order reappointing me to represent Mr. Rodriguez on his § 2255 motion. Thank you for your attention to this matter.

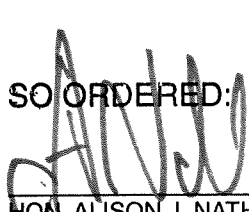
Respectfully submitted,

/s/ Ezra Spilke  
Ezra Spilke  
1825 Foster Avenue, Suite 1K  
Brooklyn, New York 11230  
(718) 783-3682  
*Prior Counsel for Anthony Rodriguez*

Cc: All counsel of record by ECF

For the above reasons, and pursuant to the Criminal Justice Act, 18 U.S.C. § 3006A, and the discretion of the Court, Ezra Spilke is hereby appointed to represent Mr. Rodriguez on his § 2255 motion. SO ORDERED.

SO ORDERED:

  
HON. ALISON J. NATHAN  
UNITED STATES DISTRICT JUDGE

1/8/20